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ABSTRACT

In this transcript of a radio program about the Bakke case, a news team covers the following topics: (1) Vernon Jordan's admonitions to use restraint in assessing the implications of Bakke; (2) blacks' suspicions about affirmative action; (3) Robert McKay's thoughts on the meaning of Bakke; (4) McGeorge Bundy's thoughts on the Harvard Admissions Program; (5) Ray Yasser on a possible reversal of affirmative action; (6) Michael McKristol on admissions policy at Marquette University Law School; (7) the impact of the Bakke decision at Davis Medical School; (8) the expanding pool of qualified minority students; (9) Sylvia Galloway on fashioning admissions policies and on the status of affirmative action; (1) George Hanford on considerations in structuring admissions procedures; and (11) student assessment of the personal impact of the Bakke decision. (Author/WI)

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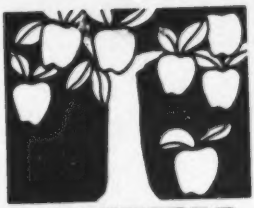

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Options in Education
TRANSCRIPT:

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Program No. 138: "BEYOND BAKKE"

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"BEYOND BAKKE"

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[Protestors Chanting.]

MERROW: "We know you're on Bakke's side; we know you're on Bakke's side."

REINHARDT: That's what students were chanting earlier this year at the University of California, Davis Campus, and elsewhere.

MERROW: The U. S. Supreme Court was not the object of that particular protest.

REINHARDT: But the Supreme Court is on Bakke's side. And because of that, Allan Bakke is now in medical school at the Davis Campus of the University of California.

MERROW: You all remember the Bakke case, but here's a quick summary any way. He's the 37 year old, now 38, who wanted to to go medical school. He was twice rejected by U.C. Davis, which accepts one hundred first year medical students each year.

REINHARDT: He sued after he learned that the school set aside sixteen places for disadvantaged students, all minorities, and he won.

MERROW: The final victory came in June of this year, four years after he first sued.

REINHARDT: He won; that's clear. But did affirmative action lose?

MERROW: That's what an awful lot of people predicted would happen if Bakke won.

REINHARDT: One prediction: if Bakke wins, it will bring back the "for white only" signs at the doors of the professional schools.

MERROW: As one writer put it, if the Supreme Court rules for Bakke, it will be an official sanction to turn against blacks and other minorities.

REINHARDT: Well, Bakke won. This week on OPTIONS IN EDUCATION, we're going to try to figure out who lost.

I'm Barbara Reinhardt.

MERROW: And I'm John Merrow.

JORDAN URGES RESTRAINT IN ASSESSING IMPLICATIONS OF BAKKE

JORDAN: Everybody's projecting what's going to happen. When Bakke was before the Court, I wouldn't talk about it, simply because I didn't know what was going to happen. And therefore, I don't have a projection. Maybe some of the lawyers are more lawyer-oriented than I am. I'm sort of a social worker. I don't have -- I don't know what's going to happen. And my notion is to wait and see what's going to happen rather than plan for disaster.

REINHARDT: Vernon Jordan is the head of the Urban League. Not only does he refuse to predict the consequences, he also objects to the way the press has characterized the decision; that is, Bakke wins. That somehow implies that blacks lost. Jordan says that minorities didn't win, but they didn't lose either.

JORDAN: I think we have, in the black community, a difficult problem

of saying again to black people, "By George, the white people beat you out again." Because I think that that kind of defeatist attitude can have a very negative impact on many, many things in our society. And therefore, I think the fair and accurate interpretation of the situation is, in fact, to walk the middle way on it. And I think that that's pretty much what we've done.

I still think, on the other hand, that the affirmative duty of affirmative action rests with the powers that be. And that's the control of the institutional life of America. And as I've tried to say, I'm not prepared to leave it to good faith and to trusting, because I think the record, even for the best institutions, defies that.

I also think that people have to understand that black people have no sympathy for Bakke. It's not the argument that I would make if I were arguing before the Supreme Court. But it is an argument of what people feel in their depth of their gut. I grew up in Georgia. My parents were law-abiding, taxpaying, non-welfare recipient citizens. I went to a pretty good undergraduate school, and I think that the record has demonstrated over my period of years that I ain't exactly dumb. Sometimes I'm periodically smart even. But after finishing graduate school, there was no need for me to apply to go to law school at the University of Georgia, for no other reason than the fact that I was black. It had nothing to do with my standing in my class; it had nothing to with my LAST scores. It had nothing to do with anything other than my blackness. And to reinforce the notion of keeping me out, they paid the difference on what it cost to go to Howard Law School and the University of Georgia Law School to send me to Howard, and gave me a railroad ticket, or a bus ticket, or a plane ticket to make sure that I wouldn't come near Clarke County or Athens, Georgia.

So I really don't give a damn about Bakke, personally, and I feel very strongly about that. People who have had years and years of special negative treatment: the only way to overcome that is to get some years of special, positive treatment. I absolutely believe that. And I think whatever process that takes -- quotas, set asides, or what have you -- that that is the only we're going to ultimately achieve it. And I think that has to be kept clearly in mind.

REINHARDT: Vernon Jordan, head of the Urban League, speaking at a recent New York conference called "Beyond Bakke." He calls for preferential treatment, including quotas, for minorities. But in fact, only one Supreme Court justice out of nine agreed with that position.

A BRIEF REVIEW OF THE BAKKE DECISION

MERROW: Which brings us to the point that the justices disagreed with each other on just about every aspect of the Bakke case. They did agree, by 5 to 4, that the Davis quota system, reserving sixteen places for minorities, was illegal.

REINHARDT: They also agreed, again 5 to 4, that the concept of affirmative action is legal, that college and university admissions officers may take race into consideration.

MERROW: No quotas, but goals are fine. And that sounds simple, as long as you can keep the distinction between goals and quotas clear.

REINHARDT: Not in your head, that's easy; but in the actual practice of admitting people to college or graduate school. Then it's tough.

MERROW: We'll come back to that question in a minute. But we ought to have a word about affirmative action generally.

REINHARDT: First off, it's just a kid compared to Allan Bakke. He's now

38. But affirmative action programs to get minorities into the professions are barely ten years old.

MERROW: In 1968, really the last year before the big affirmative action push, 2.7% of the medical students and 3.1% of the law students were minorities.

REINHARDT: Six years later, in 1974, the percentage of minority medical students had nearly tripled to 7 1/2%.

MERROW: Law schools hit a peak in 1976, going from 3.1% to 5.7%.

REINHARDT: Since then the percentages have been dropping, slightly but surely. Now it's 6.7 in med school, and 4.9 in law school.

MERROW: And today fewer blacks and other minorities are even applying to professional schools. Perhaps they're discouraged over the debates about affirmative action in the early stages of the Bakke case, even before the Supreme Court decision.

REINHARDT: Judging by the numbers any way, affirmative action programs have made a difference. But of course, numbers don't necessarily tell the whole story.

BLACKS EXPRESS SUSPICIONS OVER AFFIRMATIVE ACTION

YOUNG: America, particularly its institutions of higher education, are probably not too much less racist now than they were a hundred years ago. And through affirmative actior, black students were given a false impression that this system was now open, when, in fact, it was a system that, because of its design and its nature, only a limited number, and probably a token group of black people, actually ever benefitted from it, in the first place. But as a result of affirmative action being instituted, it served as a pacification program. And we were made to think that things had really gotten a lot better.

REINHARDT: Kelvin Young is a student at the University of the District of Columbia. He's suspicious of affirmative action, and, perhaps surprisingly, pro-Bakke.

YOUNG: The reason why I wanted Bakke to win his case is because I wanted the outcome of his case to reflect the reality as opposed to the image that certain powers that be wished to promote.

Before affirmative action, people like Frederick Douglass and Du Bois were educated, and throughout history, who existed as symbols of what a black person could accomplish in this society. They didn't come into being with affirmative action. The numbers slightly increased, but the population, overall, has also increased. So it's a relative gain, relative to the difference in population. It probably reflects not much of a change percentage-wise in the last hundred years.

REINHARDT: Let me say something, and you tell me if this is what you're saying. Are you saying that the Bakke decision doesn't really affect you too much one way or the other, because you have always considered affirmative action and what it stood for to be something sort of a white, liberal, middle class group was doing for blacks, thinking it was really doing a great favor?

YOUNG: Precisely. Precisely.

REINHARDT: Kelvin Young, a student at the University of the District of Columbia in Washington, D. C.

MERROW: Colleges didn't create affirmative action programs simply out

of goodwill. In some cases, they felt the force of law. The Congress supported efforts to correct the effects of past discrimination, most notably by passing the civil rights acts of the 1960s.

REINHARDT: Some of the affirmative action programs used quotas. Those are now illegal.

MERROW: But can colleges set goals, numerical goals? And if a hypothetical university sets a numerical goal, isn't that pretty much the same as a quota.

SORTING OUT THE MEANING OF BAKKE

REINHARDT: Robert McKay is one of hundreds of scholars, lawyers and admissions directors who have spent the past several months trying to figure out what the Bakke decision actually means, particularly regarding quotas and numerical goals.

McKAY: The so-called quota at Davis, which was a two track system, 84 students that were general admissions, with race being taken into account, sixteen where race and ethnic background were the sole factor: that was struck down. Call it loosely a quota. But Justice Powell spoke for the Court in saying that there is only a semantic distinction, which he thought not very important, between quotas and goals. And he acknowledged, at least implicitly by citing favorably the Harvard College program, that numbers have to be taken into account, or at least may permissibly be taken into account.

So one of the possibilities would be that a school would say "We want a larger proportion of blacks and specific ethnic groups, and we want to encourage them by recruitment, by special testing and by taking into account disadvantages they may have suffered through race and other factors." Or a school might say "We want a range of "X" to "Y" numbers of students as a goal, but without setting either a minimum or a maximum so it doesn't have the same fixed set aside quality that the Davis program had.

MERROW: What you can't do is have a fixed bottom or a fixed top.

McKAY: I would think probably not, although that isn't absolutely clear. All the Court really said was invalid was the Davis program, which had a fixed bottom and top, which were the same essentially, sixteen. And it was done on the basis of an entirely separate admissions program, a different committee, and nobody was eligible to compete for those sixteen places, except members of the four specified racial and ethnic groups.

MERROW: A lot of people have looked at the Harvard plan, which Justice Powell praised, and said "Hey, that's just a covert way of doing what Davis was doing overtly."

McKAY: Well, clearly Powell did not think that. And I don't by any means suggest that every school should adopt the Harvard program. I hope they will not all flock to doing the same thing. Each school, it seems to me, should decide what its own mission is and the kind of diversity they want. Now some may want more religious diversity or some more religious homogeneity than others. And that may be a permissible factor. Others may want more geographical diversity. Others may prefer to have geographical concentration because of the community they serve. Those are all factors to be taken into account.

What this forces schools to do, I think very usefully, is to think about what they are trying to do in terms of educational mission and in terms of educational impact. And then they can formulate a program that makes sense for them. The Harvard program is not right for everybody. It is probably not right for professional schools. Powell I think was simply giving a for instance, saying that there're lots of ways to skin this particular cat.

MERROW: The terms "hard data" and "soft data" keep coming up. Now hard data are the scores, the test scores, the LSAT, that sort of thing.

McKAY: The SAT, the LSAT for law schools, the medical college admission test scores for medical schools.

MERROW: But soft data?

McKAY: Soft data are the things that we've been very wary of in the past, because sometimes they've been used as a basis for discrimination. But they can be used in a not altogether subjective way to talk about what obstacles an individual's overcome, which can be racial....

MERROW: Let's give some examples.

McKAY: It can be ethnic background. It can be coming from a different language family home, so that English is a second language. It can be persons who have overcome serious physical difficulties, have come from broken homes.

MERROW: But you still sort of end up setting up a point system: "Well, let's give one point if the guy's handicapped...."

McKAY: I think it's perfectly possible that that will happen. That's being done in some schools now, and it may well be possible. You have to have some way of taking into account these factors. And so if instead of just saying we're going to use a combination of grade point average and SAT or LSAT, we're going to look at the whole individual and compare that individual with other individuals who apply and the educational mission of the particular institution. Then I think we can have a better admissions program. It is unquestionably more difficult to do.

MERROW: I was just going to say it's much harder. It'd be much easier just to look at the test scores.

McKAY: Oh, sure. You look at the test scores and you go right down the line. You say "Here's our class," bang, bang, bang. But that is not going to achieve the mission of a pluralistic society such as the United States. And it would definitely exclude from the selective institutions, which are very important to our society, the large bulk, almost all of the racial and ethnic minority groups in this country. So we have to find another way.

MERROW: What's the worst thing that could possibly happen as a result of the Bakke decision?

McKAY: The worst thing that could happen as a result of the decision is if legislatures would feel they had to get in the act. And so there would be what would inevitably be an emotion-laden debate in state legislatures or national Congress as to what the legislative prescription should be in defining "minority," for instance, or as to the extent of preference to be given. I would fear that debate. I would fear its impact upon minority admissions, and I would fear its impact upon educational freedom.

What I like most about the Bakke decision is that it has remanded, in Mr. Derschowitz's words, the decision and the operational activity to the nation and to the institutions of higher education.

MERROW: That is, it leaves higher education alone.

McKAY: That's right. It gives the initiative back to higher education.

REINHARDT: Robert McKay of the Aspen Institute at a "Bakke and Beyond" conference in New York City.

REINHARDT: A lot of people agree with McKay tha affirmative action policies belong in the hands of college and university administrators, not politicians.

MERROW: But there are those who say leaving things up to the colleges may be the worst way. They didn't exactly embrace affirmative action in the first place, remember. A lot of the credit goes to students, public pressure, private foundations and, yes, even to politicians.

THE HARVARD ADMISSIONS PROGRAM

REINHARDT: McKay referred to the Harvard admissions plan, which Supreme Court Justice Powell took pains to praise in his decision. Harvard has a system of weights, special points, for certain desirable qualities and characteristics, including not only race and ethnic background, but also athletic and artistic ability, musical talent.

MERROW: We're not the first reporters, and we won't be the last, to discover that now nearly all the colleges and universities and graduate schools are saying that their systems are much like Harvard's.

REINHARDT: One ambitious promoter of affirmative action that is not a college or a university is the Ford Foundation. It now sponsors "Beyond Bakke" meetings around the country. John asked McGeorge Bundy, president of the Ford Foundation, if he's at all skeptical about the number of colleges claiming to do things Harvard's way.

BUNDY: Well, you've got to have a certain measure of sympathy for the colleges. I do think that it was striking that so many of them promptly lined up and said they had programs just like Harvard College's program. What I do think is true is that most of them, the selective ones, the ones who have a chance to choose, do look for variety or for diversity, in Powell's words. But you're entitled to arch an eyebrow at that, I think.

MERROW: It took a lot of pressure to create affirmative action programs from students, faculty, from courts, from outside pressure groups. Now the Court, in the Bakke decision, seems to be saying, "Well, the responsibility is up to higher education." Do you believe that higher education authorities can be relied on, can be trusted to continue affirmative action programs?

BUNDY: My own experience on affirmative action has been that it has very seldom been stronger or more effective than educational leadership. I would agree with you that what awakened education leadership in the 1960s was a combination of forces, in which the new awareness of educational authorities was only one element. There was certainly a new consciousness among students and faculty and outside the institutions. But if I were to ask now whether I thought -- if I were to be asked whether I thought external pressures or the internal commitment of educational leadership was the more powerful affirmative force for strong programs in affirmative action, I would not put educational leadership in last place, by any means.

MERROW: Where would you put them?

BUNDY: Well, I think that they're as lively and energetic on this as anybody except militant members of minority groups themselves. And they, of course, should play their part.

MERROW: The decision, though, does seem to give higher education authorities the leeway to slide, if....

BUNDY: ...Well, the decision doesn't give them that leeway. They always had it. The decision actually changes the ground rules only insofar as it creates a clear constitutional green light on something which was contested before. Except for the particular business of fixed set asides, two track

systems, quotas if you will, which are ruled out, the decision does not in any way limit the capacity of educational institutions to pursue strong programs, in my judgment.

MERROW: Let's talk politics for a second, or the practical side. What's happening? What's happening in affirmative action today? Is there a general retreat?

BUNDY: Well, if you mean affirmative action across the broad, including education, employment, political presence and everything else that constitutes membership in the mainstream of society, I would not say that the last five years have been our best. But I would also say that that kind of long, long struggle is bound to have ups and downs. And coming back to the particular case of the educational field, I think that the resolution of the Bakke case, with the clear green light for most of the work, ninety percent, as Vernon Jordan would put it, is, ought to be and can be an instrument of encouragement and of new commitment rather than a drag or a brake.

MERROW: But as you said yourself, it's a green light. That doesn't mean -- that doesn't determine who's going to drive through the intersection.

BUNDY: It certainly does not. And I believe that in the end, you aren't going to -- that coercion is not the way by which effective affirmative action really happens. There are cases where it helps, most notably, I think, in some of the significant employment cases. But the largest progress in this field has not been made by fiat, but by changes in the behavior of people and in their decision, after making those changes, that they want to stay with them.

MERROW: You've indicated elsewhere that the problem is that size of the applicant pool; not who's getting in, but just really that there're not enough minorities applying to the professional schools. What can be done to increase that pool?

BUNDY: Well, that's, of course, a very good question. It is a problem at professional school levels. It's not particularly a problem for the absolutely top-notch law school or medical school. But you go just a little way down the ladder, and the pool of applicants gets to be relatively smaller, and there specific qualifications -- and some qualifications, as distinct from a blind reliance on test scores: some qualifications are important for lawyers and doctors. They get weaker, and it's harder to accept them with confidence that they will succeed. That means that there is some failure in the colleges, in the level of training that potential candidates might get, and even a much larger failing back in the school system and in the general preparation that the society affords to these kids as to what they can do, how they can perform, what they can achieve and whether they're expected to achieve.

MERROW: But you haven't lost faith in the ability of the school system to turn things around?

BUNDY: I don't think one can. You can't lose faith in it. You can say it's not succeeding. But you have to then try and do better, because one of the things that is very clear about the struggle against our racist inheritance is that it is long and that it has to go on in many dimensions, and you can't give up on any part of it.

REINHARDT: McGeorge Bundy of the Ford Foundation. He mentioned the applicant pool. That's a fancy way of referring to those who apply to professional schools.

A POSSIBLE REVERSAL OF AFFIRMATIVE ACTION?

MERROW: Last year, and apparently again this year, the number of minority applicants is dropping. Why? Some say it's because they have better opportunities elsewhere.

REINHARDT: Others fear that minorities have concluded thay lost the Bakke case and the attitudes that once favored minorities have changed. Schools don't want them, they think, so they're not bothering to apply.

MERROW: Our own survey of a dozen or so institutions indicates that colleges and graduate schools do want qualified minority students. They say they're looking hard, but not finding them.

REINHARDT: Other surveys of admissions directors come to the same conclusions. But we're skeptical. But then, we're supposed to be.

MERROW: We're not the only ways who are skeptical of those conclusions. Wade Henderson of the Council on egal Education Opportunity told us that most university officials believe the Bakke decision insulates them from pressure from minorities. Henderson says now that affirmative action isn't mandatory, many schools will ease out of their programs.

REINHARDT: Another of the skeptics -- maybe he'd rather be called a realist -- is Ray Yasser of the University of Tulsa Law School.

YASSER: Let me make the initial observation that most people or most professional educators, any way, probably strongly believe that Bakke will have little or no effect on their admissions procedure. I would bet dollars to doughnuts, as I'm fond of saying, that the majority of this nation's educators would say Bakke will not affect our procedures. What they will point out is that the Supreme Court has adopted the so-called Harvard plan. And they will then say "This is exactly what we've been doing." My goodness, what a coincidence. There're a lot of little Harvards out there, apparently. And they will conclude Bakke will have no effect upon us.

For those of you who are unfamiliar with the Harvard plan, let me briefly provide you with an outline of it. In a report to the faculty, Havard's Dean of Admissions wrote, quote: "The effectiveness of our students' educational experience has seemed to be affected as importantly by a wide variety of interests, talents, backgrounds and career goals as it is by a fine faculty and our libraries, laboratories and housing arrangements." Well, the so-called Harvard plan is really founded on the belief that diversity, diversity in the classroom, adds an essential ingredient to the education process. According to the Court, a plan for achieving educational and student body diversity, such as used by Harvard College, in which race is a factor in some admissions decisions, and in which quotas are not set for the number of students of any particular background, and in which each and every applicant is treated as an individual in the admissions process is constitutional. In short, I think -- to oversimplify perhaps, I think that most admissions officers are going to act on the assumption that they may consider race as a factor in making an admissions decision -- again, we don't know exactly how much; that quotas, strict numerical quotas are not permissible. And again, according to the view of most educators, they would say this is what we've been doing all along, that the Davis, that the peculiar Davis plan that established a quota was unique, relatively unique, any way, and not so many schools would adopt such a program. My own prediction, however, is that, as a consequence of the Bakke decision, we will find that proportionately fewer minority students will be attending the nation's professional schools. I say it because I feel that the Supreme Court, in doing what it has done in Bakke, has, in a sense, denigrated race as a factor. I think that the Court, in telling admissions committees throughout the nation that ethnic diversity is only, and I underline that, only one element in a range of factors which may be considered in attaining the goal of a diverse student body. I think in doing that, it's delivering a very subtle message to admissions professionals. To me as an admissions officer I'd read that to mean that the heat is off. It means to me that government pressure to increase minority representation in the professional schools has subsided. It means that, for example, where previously to Bakke very difficult admissions decisions would be decided in favor of minority applicant because of the government's brooding omnipresence, such decisions will not be

decided in favor of the opera singer, the halfback, and any other person who can bring her or his own special form of diversity to the classroom.

So the result, I predict, will be an initially small, but ultimately significant decrease in the proportion of minority students attending the nation's professional schools.

REINHARDT: Professor Ray Yasser of the University of Tulsa Law School. That material was recorded for OPTIONS IN EDUCATION by Phil Burger, Station KWGS in Tulsa, Oklahoma.

MERROW: Yasser says that the Bakke decision leaves the pressure for affirmative action in the hearts and minds of the administrators. He fears that won't be enough.

ADMISSIONS POLICY AT MARQUETTE UNIVERSITY LAW SCHOOL

REINHARDT: One of the professional schools that has looked at its own admissions policy and decided that it's okay as is is the law school at Marquette University. Robert Mullins reports.

MULLINS: After Bakke was handed down, the Marquette Admissions Board met and their lawyers advised them that their admissions policy was legal. The system at Davis where Bakke enrolled is basically on quota. Marquette's is not. But Assistant Dean of Admissions Michael McKristol says that the Bakke decision still leaves them guessing.

McKRISTOL: If the purposes of affirmative action are to have a proportionate minority representation in the bar, in our case, as a law school, within five years, then in the state of Wisconsin we probably ought to be admitting well over half of our class as minority attorneys, because it's going to take that kind of infusion of new minority lawyers in order to bring it up to parity in terms of percentage of minority lawyers as compared to the whole population of minority persons. Relatively few schools identify that as the purpose of affirmative action. Certainly one of the purposes is to increase minority representation, but parity within five years is not generally considered a feasible goal.

MULLINS: However, the school does acknowledge the weight that their admissions policy carries and that the way law school admissions policies operate directly influences the way bar admissions policies operate. And they explain their affirmative action program consists of getting the word out to the minority community and encouraging them to apply. Once they apply, they are treated all the same. They must score high on LSAT tests, get letters of recommendation from their undergraduate professors and meet other requirements. There are no quotas here like at Davis.

Are schools like this going to be kind of treading softly on this issue because of this indecision you say about what Bakke means?

McKRISTOL: Well, I think that certainly the majority of professional schools are going to be concerned about suits, at least to the extent that they're going to try to identify a safe course. The safe course, as it happens, has historically been pretty hard to identify. On the one hand, there has been the continuing possibility of reverse discrimination suits by persons like Allan Bakke, and before him DeFunis at the University of Washington Law School. On the other hand, there's been active involvement on the part of the Office of Civil Rights of HEW and the EEOC to try to infuse as many minority persons into the educational mainstream as possible. So in a sense, it's Scylla and Charybdis in that professional schools are trying to chart a course between these two potential liabilities.

I don't want to suggest that that is the overriding concern that happens in making admission decisions. Ultimately, talking about policy

the way we are, these seem like incredibly difficult issues. Oftentimes they're somewhat less difficult when we're sitting down and reading application files.

MULLLINS: In looking at those applications, the admissions people don't look specifically at race, but many applicants alert the school to their race, and McKristol says race obviously will be a factor. That the Davis quota admissions policy is quite unique among professional schools suggests that the Bakke decision only directly applies to one person, Allan Bakke. But schools like Marquette are still keeping their eyes and ears open to further interpretations of the decision.

REINHARDT: That report was prepared for OPTIONS IN EDUCATION by Robert Mullins, Station WUWM, Milwaukee.

THE IMPACT OF THE BAKKE DECISION AT DAVIS

MERROW: He mentioned Allan Bakke, and we shouldn't forget him. He's a first year medical student now, finally, after four years of court battles.

REINHARDT: He's keeping pretty much to himself. All he would say to the press is that he's pleased. But our reporter, Jay Baltezore, did talk to some of Bakke's classmates and one of his professors.

BALTEZORE: The mood is very calm on the Davis campus these days, a mood which seems to belie all the confusion that gained worldwide attention just a few weeks ago. Amid reporters, cameramen and plainclothes police officers, Allan Bakke walked to his first classes as a student, the victor in a long and costly legal battle with the university. As expected, a group of demonstrators called for the Bakke decision to be smashed and accused Medical School Dean John Pepper of being on Bakke's side. Students and faculty members here claim the calm was interrupted by the large press contingent that converged on the campus. But long after the reporters had left, a discernible mood of nervousness remained. How will the Bakke decision be interpreted?

The U. S. Supreme Court struck down the university's admissions policy, which reserved sixteen of one hundred openings for minority and disadvantaged students. The university can use race as an admissions criteria, said the Court, but it can't use quotas. So the difficult job of finding a new plan for the Davis Medical School has fallen on a committee composed of students and faculty, headed by Associate Dean Lois O'Grady.

O'GRADY: We have a commitment to increase the enrollment of minority students, as an example. With our new procedure, we anticipate that we will have members of minority groups in the medical school class, but the numbers will vary from year to year. Hopefully, the numbers that we admit will reflect the applicant pool, the percentages in the applicant pool. That's true of women, as an example. The women, who are a minority group in medicine, the numbers that we have in the classes reflect the percentage of women we have in the applicant pool. And that's done with no reservation of particular spots in the class for women. We actually ignore the sex of the applicant. And it's not a major point any more. We've been able to accomplish it with women. I don't see why we can't accomplish it with blacks or Chicanos or Indians, or whatever group you want to speak of.

BALTEZORE: One proposal offered by some minority students at the school suggests the new admissions plan reflect the racial character of California's population. But O'Grady insists that would be impossible, at least for now, since the school doesn't receive enough applications from minority students. And despite the school's efforts to improve the racial balance, it appears that Davis has already gained a negative reputation throughout the country as the Bakke school. Those who oppose the Supreme Court decision see the medical school as a symbol of a backward slide toward racial discrimination.

Pharmacology Professor Gary Henderson.

HENDERSON: We have seen that especially minority applicants to this school, or students that we've accepted, have chosen not to come to Davis; that I think this year we have sent out far more aceptances for the number of students that we've actually enrolled than we ever have. It's probably running four to one. And I think years ago it was probably two to one. I think the line on the street was, for minority students, "Don't go to Davis"; that, for one, we symbolized Bakke. "Don't go to a place where Bakke's going to go. Would you like to be sitting next to Allan Bakke?" So I think that the publicity has hurt us, especially for the minority applicants.

BALTEZORE: The medical school mailed acceptance notices to eighty first year minority applicants, but only 22 came to the school.

Lorenz Pembrooke, a third year medical student, says the administration will have to find a way to overcome this negative Bakke image.

PEMBROOKE: Here at Davis, we have the potential of getting a lot more students than we ever did before, primarily because the administration around here, one person, Dr. O'Grady, has committed herself to increasing that number of students to get into the school next year. But I think that given the decision that we're going to have a lot of students who are not even going to think about applying to medical school now because they feel their chances are very poor of getting into a medical school, and primarily, Davis, I think, because the sentiment is that the school's administrators are not vey sympathetic towards minority students.

So if we do see a trend, if we do see the same trend we had last year as far as students applying to this school, it's only because a larger recruitment effort was made as compared to years past where there was no recruitment at all.

BALTEZORE: The Supreme Court decision clearly did not open the door for more white applicants to gain admission to colleges and universities. But Davis student Jenny Jennison sees some indication of a trend in that direction.

JENNISON: There're large numbers of people who'd like to see Allan Bakke as their symbol because he means they should get into medical school too. But those people haven't been getting into medical school for a long time in large numbers. And most people who get rejected are white and are upper middle class and have got good grades, and they aren't getting in, and hopefully it's for good reason because schools are looking at other criteria.

BALTEZORE: Allan Bakke himself remains quiet and reserved, despite all the attention. He's barely noticeable on the Davis campus as he enters and leaves the various lecture halls. A former engineer at the NASA Ames Research Center near San Jose, Bakke now has a daily two hundred and fifty mile round-trip commute to school from his home in Los Altos on the San Francisco peninsula. But that won't last for long, as Bakke has told some students he'll soon be looking for housing for his wife and three children a bit closer to Davis.

Bakke continues to maintain his long-held silence with the press, refusing any comment when reporters approach. A similar low-key posture is also shared by biochemistry Professor William Benezak, who lectured Bakke's first class at Davis.

BENEZAK: He seems like any other student in that class. If I didn't know what he looks like, I would not have seen anything unusual about Mr. Bakke in the class. He comes to class. He listens to the lectures attentively, as do most of the students. I did note on the first day of class that a number of students appeared to go up and introduce themselves to Mr. Bakke. But many first year classes have instances where students introduce

themselves to each other. There seemed to be a little bit more of that introduction with regard to Mr. Bakke than perhaps I'd noted in previous years.

BALTEZORE: It's certain the Davis Medical School will remain the subject of attention as long as Allan Bakke remains here. And the students seem a little ambivalent about that. But there's no evidence that they harbor any personal resentment toward him.

STUDENT: He's just like any other student here.

BALTEZORE: Have you talked with him at all?

STUDENT: Oh, yeah. He's a nice guy. You know, you joke around like anybody else.

STUDENT: Well, for me it's the first time I've had to deal on a personal level with a political entity. And as a person, I don't see him any differently than I would any other student. But I haven't yet resolved how I feel about my conflicting political beliefs with his actions. But I don't feel that I want to penalize him personally for it. It's hell being in medical school, no matter how you do it. So I talk to him about housing and lab problems and whether or not he liked the lecture, and the average concerns of a medical student.

STUDENT: I'd forgotten he's even in the class right now. It's just there're so many things, other things going on, that I think most of the students have forgotten he's even in the class.

BALTEZORE: Have you had any discussions with him, informal or otherwise?

STUDENT: Oh, just joking about it, you know, the first day about all the publicity and all the reporters, and the things.

BALTEZORE: What did he -- what did he say about it? Was it a concern to him because he was the center of this attention?

STUDENT: He was concerned for the class. He didn't want to bring all this down on the class on the first day, all the attention. And it's a hard enough day as it is.

STUDENT: Everyone's friendly toward him. He's friendly.

BALTEZORE: Have you had any conversations with him yourself?

STUDENT: Yeah. Yeah.

BALTEZORE: What does he talk about?

STUDENT: Well, to start out, making little jokes about, you know, "I haven't met you. Who are you?"

STUDENT: The thing that really has bothered me are all the reporters. And I spoke with a reporter and said "Well, I'm glad it's over now." And he said "Just wait till graduation."

BALTEZORE: At the University of California Medical School at Davis, I'm Jay Baltezore for OPTIONS IN EDUCATION.

EXPANDING THE POOL OF QUALIFIED MINORITY APPLICANTS

REINHARDT: Four years from now, how many minority doctors will graduate in that same class, or from other medical schools? How many minority students will get law degrees?

MERROW: McGeorge Bundy says that to increase the number of graduates, you have to expand the pool of qualified minority applicants. That seems to mean that elementary and secondary schools have to do a better job of preparing minorities for college.

REINHARDT: Another way to increase the pool is to strengthen special help programs on college campuses, like tutoring. That would cut the dropout and flunk-out rates.

* * *

FASHIONING AN ADMISSIONS POLICY

MERROW: The Bakke decision leaves matters in the hands of the admissions officers.

REINHARDT: What do they want? Well, for one thing, they don't want to be sued, which is why a lot of them are agonizing over their admissions process at the college and graduate school levels.

MERROW: They're also attending conferences and reading papers about the decision. That's turned into a minor industry in education these days.

REINHARDT: Sylvia Galloway of the American Council on Education, a higher education group in Washington, has been attending meetings and advising admissions people on the rules after Bakke. When John talked with Ms Galloway, they created a university of their own, Hypothetical Tech, and tried to figure out what they could and could not do when considering applicants for admission.

MERROW: Let's set a minimum of 400, and anybody who scores above 400 can be considered for admission to our college.

GALLOWAY: We're saying the same thing. But because I would be the minority student applying and because of various societal factors that I had no control of, my 400 would translate as a 500, whereas your 400 would....

MERROW: A good old 400.

GALLOWAY: ...be a 400, which then gets you back to -- in a sense, all of these things are just playing with....

MERROW: But the admissions committee could look at me and see that I spent three years as a lumberjack and two years as a tutor in prison, and they might say, hey, that's worth a hundred points too. So let's give Merrow a hundred points, and Galloway achieved this. So now we're back at 500 each.

GALLOWAY: Yeah. Well, as I understand the Court's decision, that could very well happen....

MERROW: You don't have to be a minority to get a special kind of a point system.

GALLOWAY: And that is a special criterion.

MERROW: Let's keep setting up this admissions procedure. Now you're black. I mean that's going to affec the way you're going to think about the need to get minorities in. How else would you -- you know, what other things should an admissions committee look for? I mean how else would you evaluate people so that you don't come out with just the people with the highest test scores?

GALLOWAY: I was going to say you look at motivation, which is kind of strange, because how do you look at motivation? But I guess in saying that, I mean you look at the person's total past history in school and in a familial

sense, if possible.

MERROW: But the measure of motivation can change drastically. I mean my measure could be, you know, that I was an honor student and an Eagle scout. Maybe it wouldn't be fair to say that to a disadvantaged kid, for example.

GALLOWAY: No, my measure as a disadvantaged kid could be, perhaps, that I was raised in the slums of some city or other and had managed in a predominately school environment to keep a C-plus or B-minus average, had worked through my entire high school life and was very ambitious and wanted to go ahead to college. Because my circumstances were much different and because I was probably coming from a situation on an economic level that was much lower, someone maybe could look at me and say "This is a motivated person," whereas -- and this we heard over and over again -- if I had been given every opportunity to do well and had done okay, B-minus, I might be presumed to be less motivated.

MERROW: But you still now -- if you're now the admissions person, you still are not going to tell the public how you're doing it. You're still going to keep it in the dark.

GALLOWAY: I simply want to say it's difficult to take subjective criteria and put them on a hard and fast factual plan layout. Because the criteria are subjective, it would be in my best interest to not keep it nebulous in a negative sense, but to keep it loose, to keep it as flexible as I possibly could within the confines of the law.

MERROW: Within the confines of the law. You just hedged it there.

GALLOWAY: Well?

MERROW: I'm still going to sue you. Are you doing anything different now than you would have done before Bakke? Did the Bakke decision change the way you're running this hypothetical college?

GALLOWAY: The Bakke decision, to put myself in the role of the admissions director, has changed what I'm doing only in the sense that I am not publicly saying to anyone "In this class, I'm going to make sure that I have 35 minority students." I'm not giving any specific numbers. I may very well at the end of my admissions procedures, etcetera, have 35, but I'm not setting that out.

MERROW: Now wait a minute. Are you not saying it, or are you -- but are you -- have you made up your mind?

GALLOWAY: I have not made up my mind, but....

MERROW: You better say that again for the record.

GALLOWAY: I have not made up my mind in advance that....

MERROW: That would be illegal.

GALLOWAY: Yes, that would illegal. That would be setting up the quota. I perhaps would be saying in my mind that I do want a certain number of these kinds of students, and some of those kinds of students would be minority students, which once again is nebulous. I'm just saying a certain number.

MERROW: And that's legal under Bakke.

GALLOWAY: Yes. That number might turn out to be the 35.

MERROW: But it might be seven this year and 35 next year.

GALLOWAY: Sure. Yes.

MERROW: And seven again the year after that.

GALLOWAY: Or it might be forty this year and only three the next year.

MERROW: All of which is still legal under Bakke. You can't have quotas; that's clear.

GALLOWAY: Yes. Uh-huh.

STATUS OF AFFIRMATIVE ACTION IN ADMISSIONS POLICIES

MERROW: Let's fire you from your job as admissions director at Hypothetical Tech, University, or whatever we're calling it, and bring you back to the real world. And we're at the American Council on Education where you work now. And let's ask seriously about the impact of the Bakke decision on admissions policies in colleges and universities and professional schools. What's happening? Is there a retreat from affirmative action?

GALLOWAY: No, there's not a retreat from affirmative action. The court has not disallowed it; it has upheld affirmative action programs.

MERROW: But the Court said it's in the colleges' court, "Colleges, you have to be responsible, but you go ahead and do it."

GALLOWAY: There's not a retreat from affirmative action as far as I or any of the people that I've talked to can ascertain. If anything -- and I'm not sure that this is even quite the case -- some places are in a holding pattern in terms of guidelines that they might set up to assure that there are affirmative procedures in their schools. But I would not say that there is a retreat in terms of affirmative action programs. I do know that a number of schools are experiencing a decline, professional schools, in those students that do apply.

MERROW: Why is that?

GALLOWAY: I think I might attribute that more to finances than any attitudes on the parts of the people who run those schools or the students themselves, any attitude that does or does not relate to affirmative action. I think it relates more to increasing costs and people not being able to meet the costs and not being able to get the financial aid that they need.

MERROW: One thing that occurs to me -- the Bakke decision has been very good for those people who run conferences and hold meetings around the country, because people are doing that all over the place.

GALLOWAY: Yes. So, I tell about the meeting? No.

MERROW: I know you have to go catch a plane to get to one.

GALLOWAY: Yes, I do. Nice talking with you.

REINHARDT: Sylvia Galloway of the American Council on Education in Washington, D. C.

MERROW: Galloway told me privately what a lot of others say, that the distinction between goals and quotas is semantic, that there isn't any difference. She believes that most colleges and universities have numerical goals. They just don't call them quotas.

CONSIDERATIONS IN STRUCTURING ADMISSIONS PROCEDURES

REINHARDT: In Galloway's Hypothetical Tech, the admissions procedure would be private. Well, that conflicts with some advice we heard in a speech

at yet another conference on the Bakke decision, advice from George Hanford of the College Board.

HANFORD: First and most obviously, don't let the people in your institutions do what Davis did. Don't let them use quotas. Goals and objectives, preferably in terms of ranges rather than specific numbers, are acceptable. Put differently, don't let them set places aside in their entering classes for which majority and minority candidates alike cannot compete.

Second, if they have more qualified applicants than they can admit and have followed the practice of dividing that qualified pool into three groups, the highly qualified "clear admits" at one end, the qualified applicants who clearly won't make it at the other end, and the middle group where they make the tough decisions. They've been doing that, but dipping into the qualified lower third for minority applicants. Tell them to stop. No legal expert that I've heard says that you can't cream off the top, but below that all qualified applicants should have their cases treated in the same way in a single pool.

And third, don't let them do what Georgetown did. That is, don't let them set aside a substantial pool of financial aid dollars available only to minority candidates. Just as each space in each entering class should be open to all qualified applicants, each financial aid dollar should be equally available to all admitted candidates.

Once this process of allocation is completed, however, consideration can then be given to creative and appropriate ways of special packaging of aid -- grants, loans, work -- for minority students, packages suited to their special needs.

Now in this foreshortened list of three "don'ts" and related "doables," there's one generality that stands out. Applicants must be treated individually regardless of their color, regardless of their majority or minority status. And this advice was pre-eminent among what we got from our seminar. Time and time again, we heard the admonition to be creative, inventive, flexible and to be publicly clear. But I've got to add one caveat: be accountable. Walter Schnigqenberger at Southern Methodist told a Dallas meeting: "Advise your people to keep good records of their decisions and the justifications for them, and then be prepared to stand by them." At Pennsylvania, the vice dean of the law school, Phyllis Beck, suggested a workable system of making admission decisions, giving differential weights for differential attributes. And thus once a basic single pool of qualified applicants is developed, inventive admissions officers in the days to come will be able to perfect their own systems of pluses and minuses for minority students with special characteristics.

Leaving computerization aside, there might be a parallel here to the way the Dallas Cowboys began to build their dynasty in football. That is, to assemble all the possible data on likely candidates and then assign added weights or pluses to players with special ability. If this can be done in college and graduate admissions for farm boys from Idaho and tuba players, it can be done for minority candidates from ghettos and barrios of inner cities. And I see no violation of the Powell Doctrine here.

And finally, Fred Hoggadon of Stanford reminded us dramatically of the basic problem in finding and admitting minorities and augmenting the pool. And it lies far down in the grades, in poor preparation and great disadvantage all along the line. And this, as I tried to suggest earlier, is where the remedies have ultimately to begin.

Now if the message of the last paragraph or what I've been trying to say isn't clear, it's this: being affirmative about affirmative action isn't going to be easy, and it isn't a task to be left solely to the good offices of our graduate and professional schools. It's a challenge for

all levels of education and to people who work with and for you.

REINHARDT: George Hanford of the College Board at a conference on the effects of the Bakke decision.

STUDENTS ASSESS PERSONAL IMPACT OF THE BAKKE DECISION

STUDENT: With this Bakke, it's going to be a little bit harder for me and other minorities trying to get into graduate school.

STUDENT: Oh, it'll have a definite effect on whether I go or not, because it will change the whole structure. With the decision that they rendered with him, then it's going to make it quite naturally harder for me to get in.

STUDENT: Do I expect to have any problem if I decide to go to graduate school? Very definitely it could be a problem to me in that, if I understand it correctly, they don't totally agree with the quota system of spaces set aside. And it depends on what I elect to take up in graduate school. It could have an effect on me whether I would get there or not.

STUDENT: I'm not exactly sure. It depends on my funds. And I think that it might have an effect in some schools, like, basically, predominately white schools, to whether or not they give me the type of financial aid that I might need to attend that school.

STUDENT: The quota system's fine for black people to get into medical schools and getting into law schools and trying to get these types of degrees. It will affect them.

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